

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 20-169
)	
ANDREW AUGUSTYNIAC-DUNCAN)	

POSITION WITH RESPECT TO SENTENCING FACTORS

AND NOW, comes the defendant, Andrew Augustyniak-Duncan, by and through his attorney, Michael E. DeMatt, Esquire, and the firm of Turin & DeMatt, P.C., and files the within Position with Respect to Sentencing Factors:

1. Pursuant to local rules and this court's order, the parties conferred through administrative resolution, but were not in agreement on all disputes. As such, defendant lodges the following objections to the Final Presentence Investigation Report (PSIR) filed at Document 46.

I. Objection to Bodily Injury Enhancement

2. Defendant objects to paragraph 21 of the PSIR, which provides for a 2 level enhancement for bodily injury pursuant to USSG 2A2.4(b).

3. USSG 2A2.4(b) provides: "If the victim sustained bodily injury, increase by 2 levels."

4. In the instant matter, there is insufficient evidence to support a finding that defendant caused bodily injury to any person, as there is no evidence to indicate that any objects thrown by Mr. Augustyniak-Duncan struck anyone.

5. Consequently, after removing the 2 level enhancement, several other paragraph must be adjusted to correct the erroneous offense level calculation:

- a. Paragraph 25, “Adjusted Offense Level (sub-total)” should be 10, rather than 12;
- b. Paragraph 28, “Total Offense Level” should be 8, rather than 10;
- c. Paragraph 76, “Guideline Provisions [Custody]” should indicate a total offense level of 8, and a guideline imprisonment range of 18 to 24 months;
- d. Paragraph 84, “Guidelines Provisions [Fines]” should indicate a guideline fine range of \$2,000 to \$20,000.

II. Objection to Factual Recitation in Criminal History

6. Paragraph 31 contains a statement that “the defendant beat the victim to the point of unconsciousness with a metal baseball bat.”

7. Defendant objects to the inclusion of this statement, as such a statement is consistent with an aggravated assault, which charge was withdrawn, not a simple assault for which he was actually convicted. See 18 Pa.C.S. §§ 2701 (Simple Assault) and 2702 (Aggravated Assault).

8. Apart from the foregoing objections, defendant has no other objections to the PSIR.

Respectfully submitted,

s/ Michael E. DeMatt
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